76-466

IN THE

Supreme Court of the United States

NO. A-203

October Term, 1976

MARGARET L. EDWARDS, Widow of
RALPH EDWARDS, JR., and
JESSICA LYNN EDWARDS, a minor,
by and through her next friend
and mother, MARGARET L. EDWARDS,
Appellants,

vs.

ANDREW PRICE and STRAIGHT CREEK
CONSTRUCTORS, GIBBONS AND REED
CONSRTRUCTION CO., WESTERN PAVING
COMPANY and AL JOHNSON
CONSTRUCTION CO.,
Appellees.

ON DIRECT APPEAL FROM THE COLORADO SUPREME COURT

MOTION TO DISMISS

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Appellees move to dismiss this appeal on the ground that it does not present a substantial Federal question and that the judgment below rests on an adequate non-Federal basis.

BRIEF IN SUPPORT OF MOTION

The challenged statute, Col. Rev. Stat. 8-48-101 (1973), is quoted in Appellant's brief at page D-1. Summarized, it provides that any company conducting any business by "con-

tracting out any part or all of the work thereof" to a subcontractor "shall be construed to be an employer" of the employees of the subcontractor, and shall be liable for Workmen's Compensation for the injury or death of such employees. Provided the subcontractor has complied with the Workmen's Compensation Act, its injured employees have no right of action against the general contractor.

Thus, the general contractor is ultimately liable for Workmen's Compensation benefits to all employees on the job. It can protect itself by insisting that its subcontractors provide the appropriate insurance. The statutory scheme provides that in return for this ultimate liability, the general contractor is relieved of any liability at common law, to which it would otherwise be subject under other provisions of the Act. Because one subcontractor can never be responsible for Workmen's Compensation to the employees of another subcontractor, or of the general contractor, subcontractors are not immunized from common law actions by such employees.

Generally, the states' classifications of persons to be included or excluded from the operation of the Workmen's Compensation Act have been upheld. This has been true of such employees as those of railroads, of firms having less than a certain number of workers, and of farm, domestic and gin laborers, on the ground that the nature of these employments, the existence of other laws, and the extent of the risk "were all matters no doubt considered by the legislature in exempting them from operation of the Act." *Middleton v. Texas Power & Light Company*, 249 U.S. 152 at 157. As this Court in the same decision pointed out, "There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds."

Equal protection challenges were likewise turned back in cases attacking other Workmen's Compensation classifications and exclusions in *Mountain Timber Company v. State of Washington*, 243 U.S. 219, and *New York Central Railroad Company v. White*, 243 U.S. 188.

Appellant next charges that the opinion below holds that liability may be avoided simply by allowing an employer to call itself a joint venturer. That is simply not true under either the plain provisions of the statute, or the opinion from which appeal is sought. The negligent tort feasor was found by the courts below to be an employee of the joint venture itself. Hence, the liability of the individual members of the joint venture was found as a factual matter not to be an issue. Determinations of fact are ordinarily not reviewed by this Court. *Missouri, K. & T. Ry. Co. v. Haber*, 169 U.S. 613 at page 639.

CONCLUSION

No substantial Federal question is presented by Appellant's claim that the statute permits an arbitrary classification.

Appellant's other claim that the statute permits avoidance of liability by classification of an employer as a joint venturer was disposed of by the courts below on an adequate non-Federal basis.

Hence, the appeal should be dismissed.

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